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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re Juan G., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. Juan G., Defendant and Appellant.	A125023 (Alameda County Super. Ct. No. SJ08010819)

Following a contested jurisdictional hearing, the juvenile court sustained a petition alleging that the minor, Juan G., unlawfully carried a concealed dirk or dagger, a felony. (Pen. Code, § 12020, subd. (a)(4).[1]) The minor argues that the evidence was insufficient to show that the knife was concealed upon his person, and that the juvenile court failed to perform its statutory duty to determine whether the carrying of a concealed dirk or dagger was a misdemeanor or a felony, in violation of Welfare and Institutions Code section 702. We disagree and affirm.

[1] All statutory references are to the Penal Code unless otherwise indicated.

I.

FACTUAL AND PROCEDURAL BACKGROUND

At 2:36 p.m. on July 21, 2008, Hayward police officer Jessica Perryman[2] responded to a dispatch call to investigate a report of a gang fight. The officer was patrolling the area in a marked patrol car and driving approximately five miles per hour, when the minor and a companion rounded a corner, walking toward her. The minor was approximately 40 to 50 feet from the officer when she saw the minor drop a knife onto the sidewalk. After the officer saw the knife drop, she stopped her car and ordered the minor and his companion to approach her. The officer stood between the youths and the knife, and she kept her eyes on both the minor and the knife while she waited for back-up. Several more officers arrived within a minute. Officer Perryman pointed out the knife to another officer, and he retrieved it and verified with Perryman that it was the weapon she had seen the minor drop. The weapon was a crudely made, fixed-blade knife with an aluminum foil handle.

On March 6, 2009, the district attorney moved to reduce the felony allegation of carrying a concealed dirk or dagger to a misdemeanor, in order to allow screening for supervision under Welfare and Institutions Code section 654.2. Supervision was denied, and the allegation was reinstated as a felony on March 26, 2009. Following a contested jurisdictional hearing on April 16, 2009, the juvenile court found true the allegation that the minor unlawfully carried a concealed dirk or dagger. On May 19, 2009, the minor was adjudged a ward of the court and placed on probation, in the custody of his parents. This timely appeal followed.

[2] Officer Perryman testified at both the jurisdictional hearing and at the hearing on the minor's motion to suppress, conducted on the same day. The minor does not challenge on appeal the denial of his motion to suppress.

II.

DISCUSSION

A. *Evidence of Concealment.*

The minor argues that there was insufficient evidence to sustain the allegation that the knife was concealed upon his person. (§ 12020, subd. (a)(4).) The test for reviewing a claim of insufficient evidence is "whether[,] after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S. 307, 319, original italics.) Before the order of the lower court can be reversed for insufficient evidence, "it must clearly appear that upon no hypothesis whatever is there sufficient substantial evidence to support it." (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

The statute the minor was accused of violating prohibits carrying "concealed upon his or her person any dirk or dagger." (§ 12020, subd. (a)(4).) A defendant need not be totally successful in concealing a dirk or dagger to be guilty of violating the statute. (*People v. Fuentes* (1976) 64 Cal.App.3d 953, 955 [where dirk was held in defendant's waistband, mere fact that some portion of handle was visible did not make it any less a concealed weapon].) Proof of complete concealment is not required; evidence of substantial concealment will suffice. (*People v. Wharton* (1992) 5 Cal.App.4th 72, 75 [substantial concealment was found where top one and one-half to two inches of knife was protruding from defendant's pocket].)

Here, Officer Perryman testified that she did not see a knife when she first viewed the minor. She stated that the minor's hand was closed and partially behind his back, and that she saw the knife only after it hit the ground, which supports an inference that the minor was concealing the knife in his hand behind his back. Although the minor acknowledges that there was substantial evidence that he was carrying the knife, he contends that there was "no evidence [he] carried the knife concealed under his clothing, in his pocket, or in any other way upon his person." However, a weapon need not be

concealed in a person's clothing in order to be concealed "upon his person."[3] The apparent intent of section 12020, subdivision (a)(4) is to protect public safety by prohibiting people from carrying items that are capable of use as stabbing weapons (§ 12020, subd. (c)(24)) and that are hidden from view. Indeed, the Legislature has gone so far as to broaden the definition of " 'dirk' " and " 'dagger' " in such a way that might criminalize the " 'innocent' carrying of legal instruments," because " 'there is no need to carry such items concealed in public.' "[4] (*People v. Rubalcava* (2000) 23 Cal.4th 322, 330, quoting Sen. Com. on Crim. Procedure, Analysis of Assem. Bill No. 1222 (1995-1996 Reg. Sess.) as amended May 31, 1995.) A dirk or dagger concealed behind the back of an individual is just as dangerous as one concealed in a person's clothing. The statute does not require, and the minor cites no case that holds, that concealment in clothing is the only method of concealment sufficient to sustain a conviction. We therefore conclude that a knife concealed behind a person's back is sufficiently "concealed upon his person" to violate section 12020, subdivision (a)(4).

The minor acknowledges that there is "a possible inference" that he dropped the knife in such a way to try to prevent the officer from seeing it, but argues that "throwing a weapon away [does] not amount to carrying a weapon concealed upon the person." There was evidence here not only that the minor tried to dispose of the weapon, but also that he was carrying it in such a way that it was hidden from the officer's view. We

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3 For example, in *People v. Dunn* (1976) 61 Cal.App.3d Supp. 12, the court concluded that a handgun concealed in a suitcase and carried by defendant was sufficiently " 'upon his person' " for him to be convicted of carrying a concealed firearm (§ 12025, subd. (b), now § 12025, subd. (a)(2)). (*Dunn* at pp. Supp. 13-14.)

4 The minor claims that the Legislature did not intend "to prohibit the carrying of knives as such," as evidenced by the fact that the statute specifically provides that "[k]nives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section." (§ 12020, subd. (d).) However, there is no evidence that the weapon in question was being worn openly by the minor in this fashion.

conclude that this was substantial evidence to support the juvenile court's finding that the minor violated section 12020, subdivision (a)(4).[5]

B. Statutory Obligation to Declare the Offense a Misdemeanor or Felony.

The minor also argues that the juvenile court failed to comply with its statutory obligation to declare the offense a misdemeanor or a felony. Welfare and Institutions Code section 702 (section 702) provides in relevant part that "[i]f the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." A violation of section 12020, subdivision (a)(4) is a " 'wobbler,' " as it may be punished either as a felony or a misdemeanor. Section 702's requirement to declare an offense a misdemeanor or a felony is obligatory; it compels an "explicit declaration by the juvenile court whether an offense would be a felony or a misdemeanor in the case of an adult." (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) This requirement serves dual purposes: 1) providing a record from which a maximum term of physical confinement can be determined, particularly in the event of future adjudication, and 2) "ensuring that the juvenile court is aware of, and actually exercises, its discretion." (*Id.* at pp. 1205, 1207.)

Remand is not automatic where "it would be merely a redundant exercise, in the face of [the] record." (*In re Manzy W.*, *supra*, 14 Cal.4th at p. 1211.) The record may show that the juvenile court was aware of, and exercised, its discretion to determine the felony or misdemeanor nature of a wobbler, despite its failure to explicitly state how the offense would be treated in the case of an adult. (*Id*. at p. 1209.) However, "neither the

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5 Respondent relies on a few out-of-state cases in support of its argument that the weapon was concealed. (*State v. Veneroso* (Idaho App. 2003) 71 P.3d 1072, 1075 [general test of concealment is whether a weapon is carried so that it is not discernible by ordinary observation]; *Robertson v. State* (Del. 1997) 704 A.2d 267, 268 [weapon may be concealed even though easily discoverable through routine police investigative techniques]; *State v. Purlee* (Mo. 1992) 839 S.W.2d 584, 591 [weapon is concealed if it cannot be viewed by the ordinary observation of one approaching a vehicle].) We agree with the minor that the cases are factually distinguishable; however, substantial evidence nonetheless supports the juvenile court's order.

pleading, the minute order, nor the setting of a felony-level period of physical confinement may substitute for a declaration by the juvenile court as to whether an offense is a misdemeanor or felony." (*Id.* at p. 1208; *In re Kenneth H.* (1983) 33 Cal.3d 616, 619-620.)

Here, the juvenile court expressly declared that the offense was a felony, stating: "I find beyond a reasonable doubt that Juan committed a *felony*, a violation of section 12020(a)(4) of the Penal Code."[6] (Italics added.) In *In re Kenneth H., supra*, 33 Cal.3d at page 620, our Supreme Court remanded to the lower court for a failure to comply with section 702, stating: "the crucial fact is that the court did not state at any of the hearings that it found the [offense] to be a felony." This is not a case where the lower court failed to make a declaration on the record.

The minor nonetheless argues that the record does not demonstrate that the court exercised its discretion. "The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit." (*In re Manzy W., supra*, 14 Cal.4th at p. 1209.) We agree with respondent that the record establishes that the juvenile court was aware of, and exercised, its discretion to declare the minor's offense a misdemeanor or felony. On March 6, 2009, the court reduced the allegation to a misdemeanor so the minor could be screened for supervision under Welfare and Institutions Code section 654.2. The charge was reinstated as a felony by the same judge on March 26, 2009, when supervision under the statute was denied. The same judge presided over the jurisdictional hearing on April 16, 2009.

A remand to the juvenile court is unnecessary here. The juvenile court unambiguously stated that the offense was to be treated as a felony. Additionally, the record as a whole establishes that the juvenile court was aware of, and exercised, its

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6 We note that the California Supreme Court granted review in a case where the Court of Appeal held that "where a juvenile court expressly declares an offense to be a felony or misdemeanor, it is not inappropriate to presume that the declaration itself demonstrates an awareness and exercise of discretion." (*In re David V.* (2008) 166 Cal.App.4th 801, 813, review granted Dec. 17, 2008, S167716.)

discretion to treat the minor's wobbler offense as a felony based on the fact that it changed the offense from a felony to a misdemeanor, then back to a felony. As such, there is no cause for remand.

III.

DISPOSITION

The dispositional order is affirmed.

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Sepulveda, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.